

2001

# First Security Bank of Utah, National Association v. Remington Arms Company, Inc. : Brief of Appellant

Utah Supreme Court

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UTAH SUPREME COURT

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BRIGHAM YOUNG UNIVERSITY  
J. Reuben Clark Law School

IN THE SUPREME COURT OF THE  
STATE OF UTAH

\* \* \* \* \*

FIRST SECURITY BANK OF UTAH, )  
NATIONAL ASSOCIATION, a national )  
banking association, and )  
HOME ABSTRACT COMPANY, a )  
corporation, as Trustee, )  
Plaintiffs and Respondents, )

vs. )

REMINGTON ARMS COMPANY, INC., )  
et al., )  
Defendants and Appellant. )

Case No. 14301

\* \* \* \* \*

BRIEF OF APPELLANT

\* \* \* \*

Appeal from the Judgment of the District Court of Weber  
County, the Honorable John F. Wahlquist, Judge

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FILED

MAR 24 1976

IN THE SUPREME COURT OF THE  
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\* \* \* \* \*

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NATIONAL ASSOCIATION, a national )  
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TABLE OF CONTENTS

NATURE OF THE CASE . . . . . 1  
DISPOSITION IN LOWER COURT . . . . . 1  
RELIEF SOUGHT ON APPEAL. . . . . 2  
STATEMENT OF FACTS . . . . . 2  
ARGUMENT . . . . . 3  
POINT I. THE LOWER COURT ERRORED IN CONCLUDING THAT THE  
JUDGMENT LIEN OF THE APPELLANT, REMINGTON ARMS  
COMPANY, INC. WAS INFERIOR AND SUBORDINATE TO  
THE LIEN OF THE RESPONDENT . . . . . 3  
CONCLUSION . . . . . 6

CASES CITED

Ellsberg vs. Simpson, 173 NY. Supp. 128. . . . . 4,5  
Hatten Realty Company vs. Baylies, 42 Wyo. 69, 290 P.  
561 (1930) . . . . . 4,5

STATUTES CITED

Utah Code Annotated (1953), Section 78-22-1. . . . . 5

AUTHORITIES CITED

11 Am Jur 2d, Bills and Notes §915 . . . . . 3  
51 Am Jur 2d, Liens, §40 . . . . . 5

IN THE SUPREME COURT OF THE  
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FIRST SECURITY BANK OF UTAH, )  
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et al., )  
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BRIEF OF APPELLANT

\* \* \*

NATURE OF THE CASE

This is an action brought to foreclose on real and personal property of the defendant, Proudfit Sporting Goods, Company, appellant claims priority of a judgment lien to respondent's lien.

DISPOSITION IN LOWER COURT

The trial court, sitting without a jury, was presented documentary and testimonial evidence and entered judgment and a decree of foreclosure as prayed in respondent's complaint

disallowing appellant claim of a priority lien.

RELIEF SOUGHT BY APPELLANT

Appellant seeks reversal of the judgment of the trial court baring its claim on the real property of the defendant, Proudfit Sporting Goods, Company.

STATEMENT OF FACTS

For a pre-existing personal obligation of certain individuals associated with Proudfit Sporting Goods, Company, the respondent, First Security Bank, on November 23, 1970 had Proudfit Sporting Goods, Company, a corporation, execute a trust deed note for \$63,000.00 and at the same time as security for the obligation had Proudfit Sporting Goods, Company execute a trust deed. Payments were made on the note dated November 23, 1970, however, the note was not paid in total when due and a renewal note was issued on June 19, 1972 for \$68,180.00. Between the time of the execution of the trust deed and trust deed note dated November 23, 1970, and the cancellation of said note and issuance of a renewal note, the appellant, Remington Arms Company, obtained a judgment against Proudfit Sporting Goods, Company in the District Court of Weber County, Utah, which judgment was docketed December 15, 1971.

## ARGUMENT

### POINT I

#### THE LOWER COURT ERRORED IN CONCLUDING THAT THE JUDGMENT LIEN OF THE APPELLANT, REMINGTON ARMS COMPANY, INC. WAS INFERIOR AND SUBORDINATE TO THE LIEN OF THE RESPONDENT

The initial debt giving rise to the trust deed and trust deed note and promissory note in controversy before this Court came about in 1967 when a loan was granted by First Security Bank to individuals associated with Proudfit Sporting Goods, Company in an amount of \$45,000.00. At that time there was no security by way of mortgage or trust deed on real property owned by Proudfit Sporting Goods, Company. Thereafter in November of 1970, the remainder of the \$45,000.00 debt of the individuals associated with Proudfit was increased to \$63,000.00 and the trust deed note then became the obligation of Proudfit.

Appellant submits that on June 19, 1972 when Proudfit executed a promissory note for \$68,180.00, that the 1970 trust deed note for a lesser amount was paid and a new, separate and distinct contract came into being.

There has been much diversity of opinion as to the effect upon the original note by the giving of a renewal note. 11 Am Jur 2d, Bills and Notes §915, states that:

". . . some courts have held that a renewal of a note previously given by the same parties is not a continuation of a prior obligation, but is a new, separate and distinct contract, and that a note given in renewal of a preceeding note is presumed to be payment of the original demand."

In Hatten Realty Company vs. Baylies, 42 Wyo. 69, 290 P. 561 (1930), the Wyoming high court determined that a renewal note given as payment of a claim represented by the original note constitutes a new debt or a new promise.

In Ellsberg vs. Simpson, 173 NY. Supp. 128, the court said, ". . . whereas a new note is given in place of the original, but for a greater sum, it is not a renewal of the original, but operates as a payment of that note."

In the case at bar the appellant was not a party to any agreement between First Security and Proudfit to increase the secured debt. The facts, however, demonstrate that the appellant was indeed affected by the actions of the parties and appellant's security by way of judgment lien was in fact diminished by the actions of First Security and Proudfit in increasing the amount of the secured debt. Appellant would submit that if the Court allows the decision of the lower court to stand, any person, company or bank holding a senior lien could extinguish or diminish any junior lien holder by simply continuing to increase the debt obligation of the property owner by way of renewal notes.



Appellant would therefore submit that the holdings in Hatten and Ellsberg should be adopted by this Court, providing that renewal notes become new, separate and distinct contracts. Such a determination would allow senior lien holders to enforce their remedies at the time their instruments are in default and disallow them to continue to jeopardize the junior lien holder by increasing the secured debt by renewal notes.

If this Court finds the renewal of the original note operates as payment of the original, then the lien evidence by the trust deed is discharged. 51 Am Jur 2d, Liens, § 40 p179 summarizes the law by saying, ". . . it may be noted that extinguishment of a debt ipso facto discharges a lien upon which it secures."

Appellant's judgment against the defendant, Proudfit became a lien on Proudfit's real property pursuant to §78-22-1 Utah Code Annotated, 1953, which provides that from the time the judgment is docketed it becomes a lien upon all real property of the judgment debtor in the county in which the judgment is entered. In paragraph 10 of the lower court's findings of fact, the appellant's judgment lien was found to be docketed on December 15, 1971 which was after the initial trust deed note between First Security and Proudfit dated

November 23, 1970, but prior to the promissory note dated on June 19, 1972.

CONCLUSION

The appellant would respectively submit to this honorable Court that appellant's judgment lien of December 15, 1971 should have priority over the lien asserted by the respondent, inasmuch as the promissory note dated June 19, 1972 in excess of \$68,000.00 became a separate and distinct contract and constituted payment of the November 23, 1970 trust deed note, thereby making the lien asserted by the respondent junior to appellant's judgment line.

Respectively submitted,

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